



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2022-0453]

RIN 1625-AA00

Safety Zone; Portal Bridge, Hackensack River, Kearny, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Hackensack River, within a 100-yard radius of the center of the Portal Bridge at mile 5.0 over the Hackensack River, Kearny, New Jersey, including the East and West navigational channels. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the cross channel repair work on the submarine cables. Entry of vessels or persons into this zone during the enforcement periods is prohibited unless specifically authorized by the Captain of the Port New York or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 11:59 p.m., September 2, 2022. For the purposes of enforcement, actual notice will be used from 7 a.m., June 1, 2022 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0453 the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email MST1 Jaison Kurian, Waterways Management Division, U.S. Coast Guard, telephone 718-354-4000, email *Jaison.Kurian@uscg.mil*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port New York
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On April 16, 2022, a barge being transported along the Hackensack River collided with the East Fender of the Portal Bridge, resulting in the East Fender being severely damaged, and rendering the East Navigation Channel closed to maritime traffic. During the subsequent site inspection it was discovered that a large portion of the fender debris became caught on an existing submarine cable. This existing submarine cable crosses both the East and West Navigation Channels and facilitates the rail-return path for a section of the NEC track circuit. Opening any portion of the Portal Bridge before repairs to the submarine cables are complete, could result in the Portal Bridge being inoperable for an extended length of time. The enforcement of the safety zone enables the submarine cable repairs are completed in a timely manner.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not

publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard was notified of the submarine cable repair operation with insufficient time to complete the NPRM process before the enforcement of the safety zone. It is impracticable to publish an NPRM because we must establish this safety zone by June 1, 2022, for this unscheduled critical repair work. Additionally, delaying the effective date of this rule would be contrary to the public interest as it is necessary to establish this safety zone to protect personnel and vessels from hazards associated with submarine cable repairs. The Coast Guard is publishing this rule to be effective through September 2, 2022 in case the project is delayed due to unforeseen circumstances.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the replacement of the submarine cable repairs on the Portal Bridge in Kearny, NJ.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port New York (COTP) has determined that potential hazards associated with submarine cable replacement at Portal Bridge starting June 1, 2022. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the repairs to the submarine cables.

IV. Discussion of the Rule

Although we only expect the repairs to take 36 hours, this rule establishes a safety zone from 7 a.m. on June 1, 2022 until 11:59 p.m. on September 2, 2022 in case the project is delayed due to unforeseen circumstances. The safety zone will cover all navigable waters of the Hackensack River, within a 100 yard radius of the Portal Bridge,

Kearny, New Jersey, including the East and West channels. We anticipate enforcing the safety zone for a 36 hour period during cable replacement operations from approximately 7 a.m. on June 1, 2022, until 7 p.m. on June 2, 2022. Upon completion of the repairs, mariners will be notified by Broadcast Notice to Mariners. During periods of enforcement, the Portal Bridge will remain in the closed position and all vessels will be prohibited from transiting under the bridge. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the bridge is being repaired. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative during the enforcement period. The Coast Guard is publishing this rule to be effective through September 2, 2022.

The Coast Guard will notify the public and local mariners of this rule through appropriate means, which may include, but are not limited to, publication in the Local Notice to Mariners and Broadcast Notice to Mariners via marine Channel 16 (VHF-FM).

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration and time-of-day of the safety zone. The safety zone is only in effect for navigable waters

within a 100-yard radius of the center of the Portal Bridge at mile 5.0 over the Hackensack River, Kearny, New Jersey. The Coast Guard will notify the public of the enforcement of this rule through appropriate means, which may include, but are not limited to, publication in the Local Notice to Mariners and Broadcast Notice to Mariners via VHF-FM marine channel 16.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on

actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a safety zone on all navigable waters of the Hackensack River, within a 100-yard radius of the Portal Bridge, Kearny, New Jersey, including the East and West navigational channels. It is categorically excluded from further review under paragraph L60 (a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;
Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T01-0453 to read as follows:

§ 165. T01-0453 Safety Zone; Portal Bridge, Hackensack River, Kearny, NJ.

(a) *Location.* The following area is a safety zone: All navigable waters of the Hackensack River, within a 100-yard radius of the center of the Portal Bridge (mile 5.0), Kearny, New Jersey, including the East and West navigational channels.

(b) *Definitions.* As used in this section, *Designated Representative* means a Coast Guard Officer, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port New York (COTP) in the enforcement of the safety zone.

(c) *Regulations.* Under the general safety zone regulations in subpart C of this part, no person or vessel may enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port (COTP) or the COTP's designated representative. To seek permission to enter, contact the COTP or the COTP's representative via VHF channel 16 or by phone at (718) 354-4353 (Sector New York Command Center). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section is effective from June 1, 2022, through September 2, 2022, but will only be enforced during periods when bridge repairs are in progress.

Dated: May 31, 2022.

Z. MERCHANT,
CAPTAIN, U.S. Coast Guard,
Captain of the Port New York

